

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



Thu 22b

Staff: LRO-SD
Staff Report: 9/20/04
Hearing Date: 10/13-15/04

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-04-38

Applicant: Dave and Sheri Jocis

Agent: Joe Astorga

Description: Substantial demolition and reconstruction of a previously-conforming 1,779 sq.ft., two-level duplex resulting in a 2,135 sq.ft., three-level duplex including retention of a 3-ft. high concrete privacy wall that encroaches three feet into the public right-of-way (Ocean Front Walk) on a 2,213 oceanfront lot.

Lot Area	2,213 sq. ft.
Parking Spaces	4
Zoning	R-N
Plan Designation	Residential North (36 dua)
Project Density	39 dua
Ht abv fin grade	30 feet

Site: 703 & 705 Zanzibar Court, Mission Beach, San Diego, San Diego County.
APN 423-314-01

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending that the Commission deny the proposed duplex reconstruction as it will result in construction of new development in a non-conforming location adversely affecting public access, inconsistent with Chapter 3 policies of the Coastal Act as well as the City of San Diego certified LCP, which the Commission uses for guidance in this area. The project represents the first project to be redeveloped that is located on a zero lot line in the Mission Beach area. The City's LCP requires that all development observe a 7-ft. setback from the western property line adjacent to Ocean Front Walk. The existing duplex does not comply with the LCP. The project involves substantial demolition and reconstruction of a pre-Coastal Act residential duplex that is partially located on public right-of-way (Ocean Front Walk - the public boardwalk). However, the applicant represents the project as only a remodel and small addition to the duplex and thus, proposes to retain the non-conforming setbacks, including encroachment into the public right-of-way for the duplex and a 3-ft. high privacy wall. While the applicant claims to retain 50% of the existing exterior walls, it appears, based on the submitted

plans (staff has asked for demolition plans supporting the applicant's claim, but the applicant has refused to provide them), that they are actually demolishing more than 50% of the exterior walls to redevelop the property. In any case, the project will convert the existing first floor to parking for the new development, then add new second and third floors as well as a roof deck on top of the third floor. Since the applicant is proposing to essentially reconstruct the duplex, yet still maintain its non-conforming location which encroaches into the public right-of-way, staff recommends that the development be denied.

Substantive File Documents: Certified Mission Beach Precise Plan and Planned District Ordinance; Encroachment Maintenance and Removal Agreement No. 02-024-7; CDP #6-02-125

I. PRELIMINARY STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-04-38 for the development proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform to the policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. Findings for Denial.

The Commission finds and declares as follows:

1. Project Description/Permit History. The project involves the substantial demolition of an existing two-story, 1,779 sq.ft. duplex on a 2,213 sq.ft. oceanfront lot and reconstruction of a new duplex in its place. The first floor of the existing duplex is 1,275 sq.ft. and the upper floor is 504 sq.ft. After reconstruction, the new duplex will consist of lower level parking and a small bathroom (35 sq.ft.), a middle level residential unit (1,050 sq.ft.) and an upper level residential with a roof deck above (1,050 sq.ft.) for a

total of 2,135 sq.ft. in three stories. Currently there are two parking spaces on site. Two additional spaces are proposed for a total of four on-site parking spaces.

The existing structure is located at the southeast corner of Zanzibar Court and Ocean Front Walk (the public boardwalk) in the Mission Beach community of the City of San Diego. The Ocean Front Walk boardwalk was originally constructed in 1928, and runs along the western side of Mission Beach from the South Mission Beach Jetty north approximately 2.36 miles to Thomas Avenue in the community of Pacific Beach. At that time, the concrete walkway west of the project location was approximately 11 feet wide, with a seawall/bulkhead on the seaward side, and a 12-foot wide right-of-way inland of the walkway west of the seawall is sandy beach. Historically, there were a variety of privately maintained fences, walls, decks, landscaping, and patio improvements located within the 12-foot wide public right-of-way seaward of the western property lines of all of the oceanfront lots in this location.

Commencing in August 1999, the Commission approved three permits (#s 6-99-90, 6-00-123 and 6-01-29) for the City of San Diego to remove the private encroachments in the right-of-way from Ventura Place to Santa Barbara Place. In January 2000, the Commission approved the companion permit to CDP #6-99-90 et al, for the widening of the boardwalk between Ventura Place north to Santa Barbara Place (subsequently revised to extend north to Santa Rita Place only) (CDP Nos. 6-00-1 and 6-01-29).

All of the private encroachments between Santa Barbara Place north to Santa Rita Place have subsequently been removed. In addition, the boardwalk widening between Ventura Place and Santa Rita Place as well as the installation of a landscape buffer strip has already been completed pursuant to the above-cited permits. Specifically, the previously approximately 11-foot wide boardwalk has been expanded by approximately 9 feet with an additional 3-foot wide landscape buffer area on the inland side of the improved boardwalk. Thus, the overall improved width of the boardwalk is now approximately 20 feet. The expanded boardwalk separates wheeled traffic from pedestrian traffic and consists of an 8-foot wide walking lane on the west side of the boardwalk, a 12-foot 3-inch wide two-way bicycle/skateboard lane east of that, and a 3-foot wide landscape buffer along the inland side of the expanded boardwalk, thus using the remaining portion of the public right-of-way. The purpose of the 3-foot wide landscape strip is to serve as a buffer between the residential properties and businesses and the public boardwalk. The City is responsible for maintenance of the landscape buffer.

During this same time period, the Commission approved several permits for the construction of a 3 ft. high privacy walls on private property adjacent to the public right-of-way. However, because some existing residential structures were constructed years ago with little or no setback from the property lines, the City and the Commission allowed some privacy walls to be constructed within the 3-ft wide landscape strip subject to an Encroachment Removal Agreement in which the property owner agrees to remove the wall in the future. All of the permits required that the wall not encroach any further west than the 3-foot wide landscaped buffer area. Similar to the restrictions placed on the respective projects by the City's encroachment removal agreements, the Commission

approved such projects with a special condition addressing future development. Specifically, that condition notified the property owners that if the existing residential structure was substantially altered such that 50% or more of the existing walls are demolished or removed, the wall must be removed. Pursuant to CDP #6-02-125/Jocis, the Commission approved a permit for the 3 ft. high privacy wall in the public right-of-way fronting the subject property, subject to the conditions described above.

Although the City of San Diego has a certified LCP for the Mission Beach community, the subject site is located in an area where the Commission retains permit jurisdiction. Therefore, Chapter 3 of the Coastal Act is the standard of review, with the City's LCP used as guidance.

2. Public Access. Coastal Act sections 30210, 30211 and 30212(a) are applicable to the project and state the following:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212(a)

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or, [...]

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

The boardwalk is a heavily-used recreational facility frequented by pedestrians, bicyclists, skaters, skateboarders, runners, and persons in wheelchairs. The walkway is accessible from the east/west streets off of Mission Boulevard, and provides access to the sandy beach at stairways located at various points along the seawall. Given that the vast majority of the homes along the boardwalk currently meet the building setback, the goal is that over time when existing non-conforming structures are redeveloped, that the structures will be pulled back to observe the required building setbacks and, thus, will

result in the removal of the encroachments in the public right-of-way. The presence of these encroachments represent an impact to public access in the area both in terms of physical access as well as visual access. The majority of the privacy walls are all in an alignment with one another except for those few zero lot line sites (no building setback) which have a privacy wall that extends out further west than the rest of the privacy walls. This not only poses a physical impediment to mobility along the boardwalk in that one could accidentally ride their bike into such a wall or walk into it, it also poses a visual intrusion into the “public” boardwalk area and creates a sense of “privacy” along the boardwalk, that is intended for public use. The Coastal Act provides that “Development shall not interfere with the public’s right of access to and along the shoreline”. In this particular case, the fact that the existing duplex intrudes into the public right-of-way and does not currently meet the building setbacks which in turn requires the presence of the privacy wall that is located within the public right-of-way, adversely affects and interferes with the public’s right of access to the sea. The public boardwalk is a major coastal access route used by pedestrians and bicyclists alike to gain access to the beach and ocean.

Removal of Privacy Wall. In the subject proposal, there is an existing 3-ft. high “privacy wall” situated west of the existing duplex structure. The wall is located within the City’s public right-of-way. The subject site is one of approximately 26 structures (residences and/or businesses) that are on a zero-lot line or within one foot of the zero lot line. These structures were built at a time when it was legal not to have a setback. The existing concrete masonry wall situated seaward of the duplex encroaches into the 3-foot wide landscaped buffer area adjacent to the public boardwalk. The proposed concrete masonry wall was permitted pursuant to CDP #6-02-125 approved by the Commission on 11/7/02. As noted previously, within the past several years, the City of San Diego began a series of projects that involved the widening the public boardwalk in Mission Beach. As part of those projects, several accessory improvements for all of the oceanfront properties, including concrete patios, decks, landscaping and concrete walls next to the boardwalk had to be removed as they encroached into the public right-of-way. After removal of those encroachments, the property owners obtained coastal development permits to rebuild their “privacy walls” which function as a physical buffer between the busy public boardwalk and their residential structures and/or businesses. In this particular case, the applicant was allowed to build the privacy wall within the 3-ft. wide landscaped strip as there was not sufficient setback from the western property line to build the wall on the subject property.

When the City began the program to widen the boardwalk, it was anticipated that there would be a need to have special provisions for these 26 (legal/non-conforming) homes to allow for a privacy buffer between the planned expanded boardwalk and the existing homes located at or near the western property boundary. In addition, when approving the coastal development permits for the Boardwalk expansion, the Commission was also aware of these 26 homes and the need to have special provisions to address privacy walls. The City has decided that for the 20 houses/businesses that are built on the zero lot line or within one foot of the zero lot line, if the structure was built at a time when it was legal not to have a setback, they will be permitted to use up to the full three ft. width of the

area designated for a landscape buffer for purposes of building a private wall/fence. In these cases, the privacy wall would abut the improved portion of the boardwalk and there would not be a buffer area between the boardwalk and the privacy wall. In addition for the approximately six houses/businesses that have less than a three-foot setback from the zero lot line, the City will permit some of the landscape buffer area to be used for the construction of a privacy wall.

The purpose of permitting these 26 residences/businesses to encroach into the landscaped buffer area is because these structures were legally built at a time when there was no required setback from the property line. As such, the 3-foot landscaped strip will serve as a physical barrier between the public boardwalk and the privacy walls. As noted previously, the public boardwalk is a heavily used recreational amenity which becomes very crowded during the peak summer season. A physical barrier is both desired by the adjacent homeowners and necessary. However, prior to authorization for such privacy walls, the City required that these developments first obtain an encroachment removal agreement.

In the case of the subject project, the applicant has obtained an Encroachment Removal Agreement for the proposed construction of the privacy wall within the City's right-of-way (i.e., landscape buffer strip). The encroachment removal agreement consists of a one-page form letter, Exhibit "A", and attached resolution with findings for approval of the agreement. These documents have already been recorded against the subject property and provide several stipulations. The resolution associated with the encroachment removal agreement clearly indicates that the applicant may construct and maintain a 3'0" wall encroaching "up to three feet" into the public right-of-way of Ocean Front Walk. The resolution also provides that the wall shall be removed if the property is ever redeveloped.

In its review of these proposals, the Commission also acknowledged that the structures located on the zero lot line are legal non-conforming structures as that they were built at a time when a setback from the property line was not required. In particular, in review of the privacy wall for the subject site (ref. CDP #6-02-125/Jocis) Special Condition #2 stated:

2. Future Removal of Permitted Encroachment. If the existing structure along the boardwalk is substantially altered such that 50% or more of the existing walls are demolished or removed, the development authorized by this permit shall be removed in its entirety.

In this particular case, although the applicant describes the development as a "remodel and addition to a previously existing duplex..." the proposed development is actually the substantial demolition of an existing duplex and the construction of a new duplex. Although the applicant has submitted plans which attempt to demonstrate that more than 50% of the exterior walls will be retained, the plans are obscure and difficult to read. In any regard, it is clearly evident from the legend on the plans that the majority of the walls in the existing structure are being removed and that the only walls that will be left in

place are those walls that presently are non-conforming and are located within the building setback closest to the public boardwalk (ref. Exhibit Nos. 1 & 4). In addition, as part of the applicant's previous permit for the construction of the privacy wall, they obtained an Encroachment Removal Agreement from the City. The findings of that agreement state the following:

The proposed project is a 3'0" high concrete masonry wall which will encroach up to 3'0" into the Ocean Front Walk public right-of-way adjacent to 703-705 Zanzibar Court. The encroachment is proposed in response to the widening of the Mission Beach Boardwalk and is in compliance with the criteria for encroachments in this area as permitted by the City Engineer and will be removed if the property is ever redeveloped....

The retention of the existing privacy wall that encroaches into the public right-of-way is inconsistent with the public access and recreation policies of the Coastal Act cited above. It intrudes into an area that would otherwise be a part of the City's public right-of-way (public boardwalk) and was only permitted because there was insufficient room on the site to set back the existing structure. In this case, the majority of the structure is proposed to be removed, therefore, the entire new building should be set back sufficiently to avoid the need to retain the wall in its presently non-conforming location. Removal of the wall will enhance public access along the public boardwalk, will remove a potential safety hazard to vehicular and pedestrian movement consistent with Coastal Act policies which require that development not interfere with the public's right of access to the sea. Therefore, given that the condition of approval clearly required that if the existing structure was ever substantially altered such that 50% or more of the existing walls are demolished or removed, that the privacy wall would have to be removed, the existing privacy wall that presently encroaches into the public right-of-way must be removed. The Commission finds that redevelopment of the site in the manner proposed is not consistent with the applicable policies of the Coastal Act cited previously and therefore, the finding of conformance with the certified Local Coastal Program cannot be made.

3. Visual Quality. Section 30251 of the Coastal Act requires, in part, that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, and to be visually compatible with the character of surrounding areas.

The existing residences along the boardwalk vary widely in architectural style and appearance. Development along the entire length of the boardwalk from Mission Beach to Pacific Beach is highly varied. However, for those 26 properties that are located within the zero-lot line or have less than a 2-foot setback from the western property line, the City permitted the privacy walls to be constructed within the 3-foot wide landscaped buffer/landscaped strip. While walking or riding a bike along Ocean Front Walk one can see these walls as they intrude closer to the boardwalk than the rest of the walls. Although the walls by themselves will not obstruct public views to the ocean, they do pose an adverse visual impact in that they occupy an area of the City's right-of-way that was intended to be landscaped and beautified with low-level shrubs, etc. Because these

walls intrude into that landscaped strip, they pose an adverse visual impact. As such, over time, when the previously-conforming properties are redeveloped, the existing development should be moved back to observe all of the building setbacks, the privacy walls that were built into the public right-of-way should be removed, and a new wall should be built on the western property line thus returning the 3-ft. wide landscape buffer area back to the City for landscaping and maintenance. The proposed project will thus result in an adverse visual impact as it proposes to retain the presently non-conforming 3-ft. high privacy wall in its present location.

In addition, the proposed project will result in a three-story structure directly adjacent to the public boardwalk with no building setback or “stepping back” of the development at all levels in order to avoid a “walled off effect” along the public boardwalk. This will result in a visual intrusion into the area that would otherwise be “open” in nature and encroaches further seaward than other structures along the boardwalk thus resulting in an adverse visual impact. There are other alternatives which include the removal of the wall and the relocation of the duplex further inland to observe all required setbacks. As such, the proposed development will have an adverse impact on the visual quality of the neighborhood. Therefore, the Commission finds the proposed development inconsistent with the visual protection policies of the Coastal Act.

4. Existing Non-Conforming Structures. The duplex structure which exists on the property today is non-conforming with respect to required development setbacks from property lines. The existing residential structure extends to the western property line (with a small portion extending beyond the western property line into the public right-of-way of Ocean Front Walk – the public boardwalk and does not provide the 7 ft. building setback as required by local ordinances that are also part of the certified LCP (Mission Beach Planned District Ordinance).

In addition, an existing 3 ft. high privacy wall also encroaches into the City’s right-of-way. The principal structure (duplex) and 3 ft. high privacy wall are nonconforming structures because they are inconsistent with local law that is part of the certified LCP. Specifically, Section 103.0526.4 of the Mission Beach PDO states the following:

SEC. 103.0526.4 MINIMUM YARDS FOR BAYSIDE AND OCEAN FRONT WALKS

A. The minimum yards for Bayside and Ocean Front Walks shall be as follows:

[...]

5. “R-N” Subdistrict, Ocean Front Walk – seven feet for the first story and for additional stories above the first story; three feet for 50 percent of the lot fronting on the walk and five feet for the remaining 50 percent.

[...]

The existing duplex and privacy wall do not conform with the certified LCP. The duplex is not sited at least 7 feet from the western property line.

Retention of Non-Conforming Structures. As noted above, the applicant proposes to demolish a substantial portion of the existing 1,779 sq. ft. two-story duplex and rebuild and expand the demolished portions resulting in a 2,135 sq.ft., three-level duplex. In addition, the remaining portions of the duplex located within the required setback area will be retained, but will be substantially altered with interior demolition and redesign. Although most of the exterior walls located on the first floor will remain, none of the interior area will be affected by the interior demolition. Currently the existing duplex includes 1,275 sq. ft. of living area on the first floor with 2 parking spaces provided by a carport and 504 sq. ft. of living area on the second floor. With the proposed project, the existing first floor will be converted from a 1,275 sq. ft. residential unit to 4 covered parking spaces, a small bathroom, a patio and an open storage area resulting in 35 sq. ft. of floor area. The 504 sq. ft. second floor, which currently sets over the first floor in the northeast corner of the building will mostly be demolished and reconstructed as a 1,050 sq. ft. residential unit. The proposal also includes a new third level which will be a 1,150 sq. ft. residential unit with a small roof deck above. Again, the proposed residential structure does not meet the required setbacks from Ocean Front Walk for any of the floors and in fact encroaches slightly into the public right-of-way.

At issue with the subject project is whether the proposed demolition/remodel is so substantial that the failure to bring the duplex into conformance with current standards of the LCP causes the entire revamped building to be inconsistent with the LCP. The demolition/remodel will essentially result in a new duplex on this site. As a new duplex, the project is inconsistent with the LCP setback requirements (which the Commission has found to be consistent with Coastal Act policies concerning protection of public access and visual resources). In its approval of past projects involving partial demolition and reconstruction of an existing structure, the Commission has found that if more than 50% of the exterior walls of a structure are being demolished, the proposal constitutes the development of a new structure and therefore, the entire structure must be brought into conformance with the current requirements.

In this particular case, the plans submitted by the applicant indicate that approximately 56% of the exterior walls were being retained. However, the plans are unclear and, while Commission staff has asked for more detailed and “readable” demolition and floor plans, the applicant has refused to provide them. As such, although the Commission cannot be entirely certain that more than 50% of the exterior walls of the existing structure will be demolished, the best conclusion possible given the available evidence is that is the case.

Section 13252 of the California Code of Regulations identifies the type of repair and maintenance work that can be done without triggering a requirement to bring the entire structure into compliance with the Coastal Act, including, in cases such as this, bringing non-conforming structures into conformance with current requirements. Specifically, subsection (b) states:

- (b) Unless destroyed by natural disaster, the replacement of 50 percent or more of a single family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance, under Section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit.. [Emphasis added]

Thus, even if it is not clear if 50% or more of the exterior walls are being removed, it is clear that more than 50% of the existing structure is being replaced. The Commission finds that the proposed demolition, remodel and renovations are so extensive they do not constitute repairs, improvements or alterations within the meaning of the regulations. Rather, the work amounts to new development through reconstruction of the existing duplex.

Whether the Project Increases the Degree of Nonconformity. The proposed project also increases the degree of nonconformity of the existing structure.

The concern is, if nonconforming use regulations are interpreted to allow substantial demolition of a structure and reconstruction of an essentially new development in the same nonconforming location, when only the nonconforming portion is retained and renovated rather than demolished, the intent of the yard area setbacks will not be met. This is problematic because the setbacks are established as a routine matter to separate private development from public areas, to achieve consistency in development patterns and to protect views and access available to the public. In this particular case, the structure is proposed to be redeveloped in a manner that is inconsistent with the Coastal Act and the certified LCP. The Commission finds the redevelopment of the property as proposed also increases the degree of nonconformity. Specifically, the Mission Beach PDO not only requires that structures meet first floor yard area setbacks, but also requires setbacks from the public boardwalk for additional levels above the first floor. While the nonconforming setback on the first floor will remain unchanged with this project, the setback for the second level and third levels will be changed. Currently the second floor setback meets LCP setback requirements. However, the proposed new second floor and the third floor will not. They are proposed to be setback 3 ft. from the property line, almost directly over the first floor. However, as noted above, the PDO requires that levels above the first level be setback further beyond the required first floor setback so as to “step back” the development. In this case, the proposed project will result in a three-story solid wall of development directly adjacent to the public boardwalk, with no “step-back” feature for upper levels as required by the LCP. Thus, the project will increase the degree of nonconformity.

In summary, portions of the duplex situated outside of the building setback areas are proposed to be removed yet the portions within the required building setback area (which are non-conforming) are proposed to remain. To allow what amounts to be a reconstruction without requiring that the entire duplex be brought into conformance with the LCP would be inconsistent with the intent and goals of the LCP. The extent of work will allow a significant expansion and renovation that will extend the economic life of the residence for another 75 years. Thus, it is essentially resulting in an entirely new

residential structure which will not resemble in design, floor area or likeness the existing structure at all. The applicant is proposing to essentially reconstruct the duplex, yet still maintain its non-conforming location which encroaches into the public right-of-way. In this particular case, the Commission finds that there are feasible alternatives to the proposed project which would eliminate its inconsistency with the Coastal Act policies. Specifically, the duplex could be relocated further inland to comply with the yard area setback requirement. In addition, the privacy wall could also be removed if the residential duplex is relocated further inland to comply with the setback requirements that exist for new development today. Thus, given that there are feasible alternatives to the proposed development, the Commission finds that redevelopment of the site in the manner proposed is not consistent with the Chapter 3 policies of the Coastal Act or the certified LCP and, therefore, the finding of conformance with the certified Local Coastal Program cannot be made and the project should be denied.

5. Local Coastal Planning. In addition to non-compliance with Chapter 3 policies of the Coastal Act, the subject proposal also does not comply with the existing LCP provisions cited above. Specifically, the proposed project will result in increasing the degree of non-conformity of the existing structure. Specifically, the nonconforming setback on the first floor will remain unchanged but the setback of the existing second floor will be changed in addition to the construction of a new third floor. Currently the second floor setback meets LCP setback requirements. However, the proposed new second floor and the third floor will not as they are proposed to be setback 3 ft. from the property line, almost directly over the first floor. However, as noted above, the PDO requires that levels above the first level be setback further beyond the required first floor setback so as to “step back” the development. In this case, that setback should be 10 feet but the applicant proposes to observe only a 3 ft. setback. Thus, the proposed project will result in a three-story solid wall of development directly adjacent to the public boardwalk, with no “step-back feature for upper levels” as required by the LCP. Therefore, the Commission finds that the subject proposal would prejudice the ability of the City of San Diego to continue to implement its certified LCP for the Mission Beach area of the City of San Diego.

6. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

It is recommended that the proposed project be denied as it is not consistent with the public access and visual resource protection policies of the Coastal Act. As proposed, there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the project would have on the environment. Such measures include: the removal of the privacy wall that presently

encroaches three feet into the public right-of-way and the relocation of the duplex further inland to observe all building setbacks for all proposed levels of the structure including the re-construction of the privacy wall on the western property line. Therefore, the Commission finds that the proposed project is not the least environmentally-damaging feasible alternative and cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.